

The parties proceeded to a preliminary hearing in this matter before Special Administrative Law Judge William F. Morrissey on March 19, 1998. At that time, one of the issues raised by respondent was claimant's lack of timely notice to the respondent of the

accident as required by K.S.A. 44-520. The Order issued by the Special Administrative Law Judge dated March 23, 1998, denied claimant the benefits requested. There was no appeal taken from that decision.

Claimant then provided notice to respondent of a second preliminary hearing scheduled for April 16, 1998. Again, notice under K.S.A. 44-520 was at issue. Respondent contends the April 16, 1998, hearing was an improper hearing and the Special Administrative Law Judge had no jurisdiction or authority to enter the amended Order of April 16, 1998. Respondent contends the appropriate procedure would have been an appeal to the Appeals Board from the March 23, 1998, Order.

The Appeals Board notes that the preliminary hearing transcript of April 16, 1998, contains no objection by respondent to the proceedings. K.S.A. 1997 Supp. 44-555c grants the Appeals Board exclusive jurisdiction to review decisions of the administrative law judges and rule upon questions of law and fact as presented before the administrative law judge. The Appeals Board has previously ruled that only issues presented to the administrative law judge will be considered on appeal. The issue raised by respondent regarding the impropriety of the second preliminary hearing was not raised before the Special Administrative Law Judge and the Appeals Board will not consider this issue on appeal. In addition, the Appeals Board has ruled on many occasions that there is no limit to the number of preliminary hearings which can be held by an administrative law judge. Therefore, respondent's appeal on this issue is dismissed.

With regard to whether claimant provided timely notice of accident, the Appeals Board finds the award of benefits should be affirmed. Claimant alleges accidental injury on July 28, 1997, when she slipped while washing a truck belonging to respondent. Claimant fell and fractured her pelvic bone while attempting to fix the windshield wipers. Claimant did not immediately advise respondent of the injury. However, a separate witness by the name of Manuel Vestal, an employee of Excel Corporation, acknowledged hearing claimant discuss her injury with respondent's representative, Craig Brackey, during the first part of August, 1997. Claimant verified that she spoke to Mr. Brackey on the first day he returned from being out of town. Mr. Brackey confirmed he returned from being out of town on August 5, 1997. In addition, the parties acknowledged claimant provided notice to Mr. Brackey on or about August 10, 1997, regarding the injury and the fact it occurred while adjusting the windshield wipers.

The Appeals Board, in considering the time computations from July 28, 1997, to either August 5 or August 10, 1997, finds that either date will satisfy the requirements of K.S.A. 44-520, which requires notice of an accident be provided to respondent within 10 days. The method of computing the 10 days was clarified by the Kansas Court of Appeals in McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996). In McIntyre, the court ruled that intermediate Saturdays, Sundays, and legal holidays are to be excluded from the computation, citing K.S.A. 60-206(a). The Kansas Legislature, in 1997, incorporated the McIntyre computation method into the 10 day appeal time of K.S.A.

1997 Supp. 44-551. The Appeals Board in Marva L. Scruggs v. Overland Park Regional Medical Center, Docket No. 225,060 (December, 1997), held that the McIntyre decision was intended to apply to all computations of time in workers compensation cases involving a period of less than 11 days. Ten days from July 28, 1997, based upon McIntyre, would be August 11, 1997. Therefore, notice provided by claimant on either August 5 or August 10, 1997, would be sufficient to satisfy K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Special Administrative Law Judge William F. Morrissey dated April 16, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

c: Thomas R. Lietz, Topeka, KS
B. G. Larson, Dodge City, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director